

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

KIM DOTCOM, et al.,

Defendants

)
)
) The Honorable Liam O’Grady
)
)
) Criminal No. 1:12-CR-3
)
)
)

**MOTION OF SPECIALLY APPEARING DEFENDANT MEGAUPLOAD LIMITED
FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF ITS MOTION TO DISMISS THE INDICTMENT
FOR LACK OF PERSONAL JURISDICTION**

Specially appearing defendant Megaupload Limited (“Megaupload”) respectfully moves this Court for leave to file a supplemental memorandum in support of its motion to dismiss the indictment for lack of personal jurisdiction. In support of its motion, Megaupload states:

1) At oral argument concerning Megaupload’s motion to dismiss, held Friday, July 27, 2012, the Court asked questions concerning a theory of service not advanced by the Government. More specifically, the Court asked counsel for Megaupload whether service of a criminal summons pursuant to a Mutual Legal Assistance Treaty (“MLAT”) process was an authorized alternative to the Federal Rules of Criminal Procedure. The Government had advanced the theory that service pursuant to an MLAT process would satisfy Rule 4 of the Federal Rules of Criminal Procedure but, until the July 27 hearing, had not advocated for using the MLAT as a substitute for Rule 4. It is well established, however, that an MLAT may not expand a U.S. court’s personal jurisdiction or trump the Federal Rules of Criminal (or Civil) Procedure, and is merely a mechanism to serve documents in a manner otherwise authorized by U.S. law.

2) In response to questions posed by the Court, the Government represented to the Court that the MLAT between the U.S. and Hong Kong is hierarchically superior to the Federal Rules of Criminal Procedure, and therefore trumps the Rules. The Government's statement is contrary to long-standing Supreme Court precedent. *See Cook v. United States*, 288 U.S. 102, 119 (1933); *Whitney v. Robertson*, 124 U.S. 190, 194 (1888); *see also Vorhees v. Fischer & Krecke*, 697 F.2d 574, 575-76 (4th Cir. 1983).

3) The Court further asked the parties to address a case not cited in either party's briefing: *In re Grand Jury Subpoena*, 646 F.3d 159 (4th Cir. 2011). The Fourth Circuit's ruling in that case is consistent with Megaupload's position that the only authorized way the Government may effect service of a criminal summons is by complying with the strict terms of Rule 4 of the Federal Rules of Criminal Procedure.

4) Megaupload seeks to file the attached [PROPOSED] SUPPLEMENTAL MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION OF SPECIALLY APPEARING DEFENDANT MEGAUPLOAD LIMITED TO DISMISS INDICTMENT FOR LACK OF PERSONAL JURISDICTION to address these issues raised for the first time during oral argument. *See Perry-Bay v. City of Norfolk, Va.*, 678 F. Supp. 2d 348, 374 (E.D. Va. 2009) (granting defendant's motion for leave to file a supplemental memorandum in support of its motion to dismiss, because the district court judge had asked questions about the subject matter of the supplemental brief during the hearing and "supplemental briefing would aid the decisional process").

Respectfully submitted,

Ira P. Rothken
ROTHKEN LAW FIRM
3 Hamilton Landing
Suite 280
Novato, CA 94949
(415) 924-4250
(415) 924-2905 (fax)
ira@techfirm.net

/s/ Heather H. Martin
William A. Burck
Derek L. Shaffer
Heather H. Martin (VSB # 65694)
QUINN EMANUEL URQUHART &
SULLIVAN LLP
1299 Pennsylvania Avenue N.W., Suite 825
Washington, D.C. 20004
(202) 538-8000
(202) 538-8100 (fax)
williamburck@quinnemanuel.com
derekshaffer@quinnemanuel.com
heathermartin@quinnemanuel.com

Carey R. Ramos
Robert L. Raskopf
Andrew H. Schapiro
QUINN EMANUEL URQUHART &
SULLIVAN LLP
51 Madison Avenue, 22nd Floor
New York, N.Y. 10010
(212) 849-7000
(212) 849-7100
careyramos@quinnemanuel.com
robertraskopf@quinnemanuel.com
andrewschapiro@quinnemanuel.com

Counsel for Defendant Megaupload Limited

Dated: July 31, 2012

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2012, the foregoing MOTION OF SPECIALLY APPEARING DEFENDANT MEGAUPLOAD LIMITED FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS THE INDICTMENT FOR LACK OF PERSONAL JURISDICTION was filed and served electronically by the Court's CM/ECF system upon all registered users.

/s/ Heather H. Martin
Heather H. Martin (VSB # 65694)
QUINN EMANUEL URQUHART &
SULLIVAN LLP
1299 Pennsylvania Avenue N.W., Suite 825
Washington, D.C. 20004
(202) 538-8000
(202) 538-8100 (fax)
heathermartin@quinnemanuel.com